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11 **Attorney for Plaintiffs, DAVID J. LEE and**
12 **DANIEL R. LLOYD**

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 **DAVID J. LEE and DANIEL R. LLOYD,**
16 **as individuals and, on behalf of others**
17 **similarly situated,**

18 **Plaintiffs,**

19 **vs.**

20 **CHASE MANHATTAN BANK U.S.A.,**
21 **N.A., a Delaware corporation, CHASE**
22 **MANHATTAN BANK U.S.A., N.A. d.b.a.**
23 **CHASE BANK U.S.A., N.A., JPMORGAN**
24 **CHASE & CO., a Delaware corporation;**
25 **and DOES 1, through 100, inclusive,**

Defendants.

Case No.: C 07-4732 MJJ

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' ADMINISTRATIVE
MOTION FOR CONTINUANCE OF
THE HEARING ON THE MOTION TO
DISMISS CURRENTLY SET FOR
DECEMBER 11, 2007

Good cause, the necessary requisite for the grant of any attorney-requested continuance, does not exist relative to Defendants' current Administrative Motion for a Continuance. Defendants, through their attorney, Stephen J. Newman who stated the matter while under oath, have forwarded that "good cause" does exist for continuing the hearing date of Defendants' Motion to Dismiss from December 11, 2007 (the date to which this Court, on its own motion, just continued the matter from December 4, 2007) until January 8, 2008. The basis for Defendants' request is that the December 11 date is inconvenient for Defendants' counsel. Defendants' state in their Memorandum:

"Counsel for Defendants will be in New York City on December 10, 2007 for oral argument before the Court of Appeals for the Second Circuit in another matter and for subsequent client meets. Thus, Defendant's [sic] counsel would be unable to properly prepare and travel to San Francisco to attend the December 11 hearing in this case."

Memorandum at 2:18-21 (emphasis added). A different story is told in the Declaration of Stephen J. Newman offered in support of the Motion:

"3. Defendants' request for a continuance of the hearing on Defendants' Motion to Dismiss is made on the grounds that counsel for Defendant [sic], Julia Strickland, Julia Stickland, will be in New York City on December 10, 2007 for oral argument before the Court of Appeals for the Second Circuit in another matter (In re American Express Merchants Litigation, (2nd Cir.) No. 06-1871-cv) and for subsequent client meetings. I am also scheduled to be in New York with Ms. Strickland. Thus, Defendant's [sic] counsel would be unable to properly prepare and return to San Francisco to attend the December' 11 hearing in this case. December 18 also is not available, as Ms. Strickland and I are both scheduled to be in Chicago for another matter."

Newman Dec., ¶ 3.

Three points must be made with regard to this. First, while Ms. Strickland may well be in New York on December 10, she is not listed as counsel of record for any party in the appeal and, while she may well attend the hearing, she certainly is not required to attend and participate as counsel of record. Declaration of Matthew S. Hale, ¶¶ 3-4. There is a marked difference

1 between what Mr. Newman states in the motion and in his Declaration. In the Motion, both he
2 and Ms. Strickland have to be in New York on September 10 “for oral argument” but in his
3 Declaration only Ms. Strickland “will be in New York for oral argument.” Mr. Newman is
4 merely “scheduled to be in New York with Ms. Strickland” and, is apparently there without any
5 compunction by the Second Circuit that he actually attend the hearing. Hence and second, no
6 reason exists why Mr. Newman – who has signed all pleadings in this action -- cannot attend and
7 participate in the hearing in this case on December 11, 2007. Third and finally, based upon prior
8 experience with Defendants’ counsel regarding representation by Stroock attorneys, only one
9 attorney (the one who signed the pleadings) appears and participates in any oral argument. Id., ¶
10 5.

11 For these reasons, Defendants’ Administrative Motion should be denied.

12
13
14 November 30, 2007

Respectfully submitted,

15
16 /s/

17 By: _____
18 Matthew S. Hale
19 Attorney for Plaintiffs
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Proof of Service

On Friday, November 30, 2007, I served copies of the Plaintiffs' Opposition to Defendants' Administrative Motion of Continuance of the Hearing on the Motion to Dismiss Currently set for December 11, 2007, and the Declaration of Matthew S. Hale, filed in support thereof. Service was personally effectuated upon defense counsel Stephen J. Newman of the law firm of Stroock & Stroock & Lavan on the above referenced date in courtroom Number 8 of the United States' courthouse in San Francisco.

I declare that the foregoing is true and correct, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: November 30, 2007

/s/
By: _____
Matthew S. Hale, Esq.
Counsel for Plaintiffs